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Mr. Richard M. Smith  
Chief, Field Operations Bureau  
1919 M Street NW  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Mr. Smith:

Thank you very much for your letter of February 21, 1992, regarding the legality of phone patching in the amateur service.

Unfortunately, you did not answer my questions with any degree of clarity. Therefore, kindly permit me to present the phone patch questions in a different manner. Hopefully the following is succinct and with enough clarity for you and your legal department to provide me with direct and correct answers. The questions are as follows: --

a) Where in part 97 of the amateur radio service rules and regulations does it define "phone patching"? I would appreciate it if you would provide me with the FCC's legal definition of the term "phone patching". Please be specific with your answer.

My interpretation is when an amateur has connected his common carrier telephone to his amateur station equipment to provide the public the ability to talk over domestic and international common carrier networks without incurring long distance or international tolls. Is my interpretation correct? Please be specific with your answer.

b) Where does it define in part 97 of the amateur radio service rules and regulations the circumstances under which one may use a phone patch on the amateur radio service? If there is no information on this, kindly explain all the circumstances under which one may use a phone patch on amateur radio. For example, can one use a phone patch to avoid payment of tolls and or to use it for transmittal of toll free calls for the public. etc.? Please be specific.

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c) Where does it state in part 97 of the amateur radio service rules and regulations that an amateur operator can use amateur radio to bypass the domestic and international common carrier telecommunications facilities, namely the telephone system and high seas marine communications services, for the purpose of avoiding the payment of tolls such as is being currently done daily on 21.390 mhz, 14.300 mhz, 14.313 mhz and numerous other radio amateur frequencies? Are not these actions illegal? If so, what enforcement measures have been implemented to correct them? If the actions are legal, please explain why. Please be specific.

d) Where does it state in part 97 of the amateur radio service rules and regulations that an amateur radio operator can use his or hers radio as an alternate to the common carrier, maritime, land mobile, or any other authorized radio service, such as is being done daily on 21.390 mhz, 14.300 mhz, 14.313 mhz and numerous other radio amateur frequencies? Are not these actions illegal? If they are, what enforcement measures have been implemented to correct them? If these actions are legal, please explain why. Please be specific.

e) Where does it state in part 97 of the amateur radio service rules and regulations that an amateur radio operator can use his or hers radio in conjunction with phone patching to transmit communications to facilitate the business and or commercial affairs of any party, such as is being done daily on 21.390 mhz, 14.300 mhz, 14.313 mhz and numerous other radio amateur frequencies. I am quite sure that the FCC is cognizant of the fact that many special interest groups and religious organizations are using amateur radio frequencies for facilitating their business affairs on a daily basis. Are not these actions illegal? If they are, what enforcement measures have been implemented to correct them? If these actions are legal, please explain why. Please be specific.

f) Where does it state in part 97 of the amateur radio service rules and regulations that an amateur operator or amateur network may act as a domestic and international common carrier, providing toll free telephone and high seas marine radio service to the public by soliciting their "non-tariffed" commercial telephone services through broadcasting on amateur radio frequencies, as is currently being done daily on 21.390 mhz, 14.300 mhz, 14.313 mhz and on numerous other amateur radio frequencies? All anyone has to do is tune in to these frequencies and listen to the Net Control Station asking any station listening, or any check-ins to run "2 way, toll free, short haul, long haul telephone patch into a particular state and city. Are not these actions illegal? If they are, what enforcement measures have been implemented to correct them? If these actions are legal, please explain why. Please be specific.

g) Why is the FCC (and the ARRL) continuing to aid and abet phone patch networks and other special interest groups who are using amateur radio as a telephone bypass or alternative to the common carrier, maritime, land mobile, or any other authorized radio service, as such is being done on 21.390 mhz, 14.300 mhz, 14.313 mhz and on numerous other amateur radio frequencies? This is contrary to FCC 47 C.F.R. 97; specifically 97.113, 97.115, 97.117 and Article 32 of the International Radio Regulations of which the FCC and the ARRL Official Observer Program has the responsibility of enforcing. Are not these actions illegal? If they are, what enforcement measures have been implemented to correct them? If these actions are legal, please explain why. Please be specific.

h) Do the international country third party traffic agreements (TIAS documents - e.g. TIAS 3617 & 5483) state that it is permissible to use amateur radio phone patching as an alternate to a countries common carrier, maritime, land mobile, or any other authorized radio service, such as is occurring daily on 21.390 mhz, 14.300 mhz, 14.313 mhz and on numerous other radio amateur frequencies? If not, why isn't the FCC enforcing these international third party agreements? If these actions are legal, please explain why. Please be specific.


i) Do the domestic and international common carriers allow amateur radio operators and phone patch networks to use their facilities (amateur phone patches interconnected with the phone company equipment) for the purpose of offering the general public, 2 way, toll free calls on a global basis through the bypassing of the common carrier long distance facilities, such as is being on 21.390, 14.300, 14.313 and many other amateur radio frequencies? If not, what enforcement measures are being taken by the FCC to stop these practices? If these actions are legal, please explain why. Please be specific.

j) Why is the FCC not enforcing 97.113, 97.115 and 97.117? Anyone who listens in to the phone patch networks on 21.390, 14.300, 14.313 and other numerous amateur frequencies can hear amateurs, religious organizations and special interest groups using amateur radio as an alternative to the common carrier, maritime, land mobile, and other authorized radio services on a domestic and international basis - not to mention the commercial business affairs being conducted! Are not these actions illegal? If they are, what legal measures have been implemented to correct them? If these actions are legal, please explain why. Please be specific.

Kindly refer to Mr. R. McNamara - Chief, Special Services Division letter of October 11, 1989 (File 7230-J) before answering the above mentioned questions. This letter shows that the FCC is without a doubt very much aware of the phone patching situation. Please take special note of paragraph 6 of this letter - The statements, and I am quoting Mr. Robert McNamara's own words "Considering the above limitations, it is not apparent why there should be any significant amount of third party communications transmitted in the amateur service. It appears, however, that as much as 15 percent of the 20 meter band is being claimed for such communications by some amateur operators and by organizations apparently organized specifically to utilize the amateur service for third party telephony communications."

I would appreciate it if you would answer each of the above mentioned questions individually; starting with "a" and ending with "j". And please Mr. Smith, leave the the Vietnam and Gulf wars out of this issue. The aforementioned were most adequately serviced by the Military Affiliate Radio System (MARS) and other authorized communications systems. Thank you in advance for your cooperation.

Sincerely,

  
Lloyd S. Montcalm - WA2EXQ  
93 Arbor Way  
Hyannis, MA 02601

CC: Congressman Gerry E. Studds  
Congressman Edward J. Markey

Mr. A. Sykes - Chairman, FCC - FCC  
Mr. R. Firestone - Chief, Common Carrier Bureau - FCC  
Mr. R. Haller - Chief, Private Radio Bureau - FCC  
Mr. G. Wilson III - President ARRL